

PATENT**Application # 10/042,143****Attorney Docket # 2000-0672A (1014-200)****REMARKS**

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 26, 27, 34, and 37-39 has been amended for at least one reason unrelated to patentability, including at least one of: to address an informality; to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-44 are now pending in this application. Claims 45-56 have been withdrawn. Each of claims 1, 12, 23, and 34 are in independent form.

I. The Indefiniteness Rejections

Each of claims 2, 13, 24, and 35 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The present Office Action states that "the phrase 'about' renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d)". These rejections are respectfully traversed.

As an initial matter, Applicant respectfully notes that the phrase "about" is not even mentioned by MPEP § 2173.05(d) as raising a possibility of indefiniteness.

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Regarding indefiniteness rejections, the Federal Circuit has held that the law is clear that **if the claims, read in light of the specification, reasonably apprise those skilled in the art of the use and scope of the invention**, and if the language is as precise as the subject matter permits, the claims are definite under Section 112, second paragraph. *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634, (Fed. Cir. 1985), *cert. dismissed*, 474 U.S. 976 (1985).

The Federal Circuit has held that the descriptive term "about" does not generally render a claim indefinite. *See W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 1557, 220 USPQ 303, 316 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). The term "about" entitles the applicant to a relatively broad interpretation of any range that it modifies that is claimed in the patent. *See Syntex (U.S.A.) Inc. v. Paragon Optical Inc.*, 7 USPQ2d 1001, 1038 (D. Ariz. 1987).

As another example, in a recent case, the Federal Circuit reversed a lower court that had previously held that a claim comprising the word "about" was indefinite. In reversing that ruling as clearly erroneous the court held that "[d]efiniteness problems often arise when words of degree are used in a claim. That some claim language may not be precise, however, does not automatically render a claim invalid." *BJ Services Company v. Halliburton Energy Services, Inc.*, 338 F.3d 1368, 67 USPQ2d 1692 (Fed. Cir. 2003) (*quoting Seattle Box Co., Inc. v. Indus. Crating & Packing, Inc.*, 731 F.2d 818, 826 (Fed. Cir. 1984)).

Applicant respectfully submits that when read in light of the specification, each of claims 2, 13, 24, and 35 "reasonably apprise those skilled in the art of the use and scope of the invention." Accordingly, Applicant respectfully requests withdrawal of each rejection of claims 2, 13, 24, and 35 under 35 U.S.C. 112.

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Each of claims 1-44 was rejected as anticipated under 35 U.S.C. 102(e). In support of the rejection, various portions of Mallory (U.S. Patent No. 6,954,800) were applied. These rejections are respectfully traversed.

Mallory fails to establish a *prima facie* case of anticipation. See MPEP 2131. To anticipate expressly, the "invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim". *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter "with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention". *Crown Operations Int'l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) ("A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.") The USPTO "has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967). Such factual findings must be supported by "concrete evidence in the record". *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Moreover, Mallory fails to properly establish inherent anticipation. See MPEP 2112. "Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). No evidence has been presented that the admittedly "missing descriptive material is 'necessarily present'" in Mallory. Such

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factual findings must be supported by “concrete evidence in the record”. *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

A. Claims 1-44

Inter alia, each of claims 1, 12, 23, and 34 from one of which each of claims 2-12, 13-22, 24-33, and 35-44 depends, recites “each blocking frame having timing to allow an Inter-Frame Gap (IFG) having a duration that is not recognized by an HPNA v2 station (STA) as a duration defined by an HPNA v2 specification for an HPNA IFG”. Mallory does not teach expressly or inherently “each blocking frame having timing to allow an Inter-Frame Gap (IFG) having a duration that is not recognized by an HPNA v2 station (STA) as a duration defined by an HPNA v2 specification for an HPNA IFG”.

The present Office Action recites that “Mallory teaches ... each blocking frame having timing to allow an Inter-Frame Gap (IFG) having a duration that is not recognized by an HPNA v2 station (STA) as a duration defined by an HPNA v2 specification for an HPNA IFG (Mallory, col. 103, line 66 – col. 104, line 3)”. See Page 3. Yet this relied upon portion of Mallory allegedly recites, at col. 103, line 66 – col. 104, line 3:

[t]he FLUSH command will not remove HW-generated DFPQ PRI=6 LICF frames from the TX queue in the hardware. Because HW generated LICF frames are not flushed, they will continue to block higher-priority frames. Note however, that the FLUSH command WILL REMOVE software-generated DFPQ PRI=6 LICF frames from the hardware TX queue.

Applicant respectfully asks, where in this relied-upon portion of Mallory is:

1. the “Inter-Frame gap”?
2. “a duration” of the Inter-Frame gap?
3. any reference whatsoever to an “HPNA v2 station”?

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4. any indication whatsoever that an "Inter-Frame Gap (IFG)" has "a duration that is not recognized by an HPNA v2 station (STA) as a duration defined by an HPNA v2 specification for an HPNA IFG"?

Applicant respectfully submits that at least these elements are simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, "each blocking frame having timing to allow an Inter-Frame Gap (IFG) having a duration that is not recognized by an HPNA v2 station (STA) as a duration defined by an HPNA v2 specification for an HPNA IFG".

Accordingly, it is respectfully submitted that the rejection of claims 1, 12, 23, and 34, is unsupported by Mallory and should be withdrawn. Also, the rejection of claims 2-12, 13-22, 24-33, and 35-44, each ultimately depending from one of independent claims 1, 12, 23, or 34 is unsupported by Mallory and also should be withdrawn.

B. Claims 2, 13, 24, and 35

Inter alia, each of claims 2, 13, 24, and 35 recite "the duration of each IFG between blocking frames is less than about 17 μ sec." Mallory does not teach expressly or inherently "the duration of each IFG between blocking frames is less than about 17 μ sec."

The present Office Action recites, at Page 3, that "Mallory teaches ... the duration of each IFG between blocking frames is **less than about 17 μ sec** (Mallory, col. 23, lines 54 – 57)".

Yet this relied upon portion of Mallory allegedly recites, at col. 23, lines 54 – 57:

[t]he Inter-frame Gap is 29.0 microseconds (CS_IFG), where the gap is defined at the points at which the previous frame drops below 50% of its peak and the current frame rises above 50% of its peak.

Applicant respectfully requests an explanation of how an "Inter-frame Gap" of "29.0 microseconds" anticipates a claim reciting "the duration of each IFG between blocking frames is **less than about 17 μ sec**."

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Applicant respectfully submits that at least this element is simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, “the duration of each IFG between blocking frames is less than about 17 μ sec”. Accordingly, it is respectfully submitted that the rejection of claims 2, 13, 24, and 35 is unsupported by Mallory and should be withdrawn.

C. Claims 3, 14, 25, and 36

Inter alia, each of claims 3, 14, 25, and 36 recite “each blocking frame includes a Blocking Frame Type field.” Mallory does not teach expressly or inherently “each blocking frame includes a Blocking Frame Type field.”

The present Office Action recites, at Page 3, that “Mallory teaches ... each blocking frame includes a Blocking Frame Type field (Mallory, col. 12, lines 49 – 54)”. Yet this relied upon portion of Mallory allegedly recites, at col. 12, lines 49 – 54:

[f]rame Type (FT) 616 is an eight bit field that is intended to provide flexibility for defining other frame formats in future versions of the embodiment. Present devices transmit 0 in this field, and discard any frames with FT other than zero. All other values are reserved. The field definitions in the present embodiment are for FT=0.

Applicant respectfully asks, where is any reference to a “blocking frame” in this relied upon portion of Mallory?

Applicant respectfully submits that at least this element is simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, “each blocking frame includes a Blocking Frame Type field.” Accordingly, it is respectfully submitted that the rejection of claims 3, 14, 25, and 36 is unsupported by Mallory and should be withdrawn.

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Inter alia, each of claims 5, 16, 27, and 38 recite “information contained in the Blocking Frame Type field identifies a frame type that is unknown to a v2 STA.” Mallory does not teach expressly or inherently “information contained in the Blocking Frame Type field identifies a frame type that is unknown to a v2 STA.”

The present Office Action recites, at Page 4, that “Mallory teaches ... information contained in the Blocking Frame Type field identifies a frame type that is unknown to a v2 STA (Mallory, col. 12, lines 49 – 54)”. Yet this relied upon portion of Mallory allegedly recites, at col. 12, lines 49 – 54:

[f]rame Type (FT) 616 is an eight bit field that is intended to provide flexibility for defining other frame formats in future versions of the embodiment. Present devices transmit 0 in this field, and discard any frames with FT other than zero. All other values are reserved. The field definitions in the present embodiment are for FT=0.

Applicant respectfully asks, where is any reference to a “frame type” that is “unknown to a v2 STA” in this relied upon portion of Mallory?

Applicant respectfully submits that at least this element is simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, “information contained in the Blocking Frame Type field identifies a frame type that is unknown to a v2 STA.” Accordingly, it is respectfully submitted that the rejection of claims 5, 16, 27, and 38 is unsupported by Mallory and should be withdrawn.

E. Claims 8, 19, 30, and 41

Inter alia, each of claims 8, 19, 30, and 41 recite “each blocking frame includes a scrambler initialization field having a variable length.” Mallory does not teach expressly or inherently “each blocking frame includes a scrambler initialization field having a variable length.”

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The present Office Action recites, at Page 4, that “Mallory teaches ... each blocking frame includes a scrambler initialization field having a variable length (Mallory, col. 16, lines 2 - 3)”. Yet this relied upon portion of Mallory allegedly recites, at col. 16, lines 2 – 3:

[t]he scrambler initialization circuit inserts the N bits into any of the M ($\geq N$) bits of a scrambler delay line.

Applicant respectfully asks, where is any reference to an “initialization field” in this relied upon portion of Mallory?

Applicant respectfully submits that at least this element is simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, “each blocking frame includes a scrambler initialization field having a variable length.”

Accordingly, it is respectfully submitted that the rejection of claims 8, 19, 30, and 41 is unsupported by Mallory and should be withdrawn.

F. Claims 9, 20, 31, and 42

Inter alia, each of claims 9, 20, 31, and 42 recite “each blocking frame includes a payload encoding field.” Mallory does not teach expressly or inherently “each blocking frame includes a payload encoding field.”

The present Office Action recites, at Page 4, that “Mallory teaches ... each blocking frame includes a payload encoding field (Mallory, col. 31, lines 39 - 43)”. Yet this relied upon portion of Mallory allegedly recites, at col. 31, lines 39 – 43:

[t]he payload encoding (PE) that can be achieved is a function of the channel quality between source and destination, and the channel quality generally differs between each pair of stations depending on the wiring topology and specific channel impairments.

Applicant respectfully asks, where is any reference to a “blocking frame” in this relied upon portion of Mallory?

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Applicant respectfully submits that at least this element is simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, "each blocking frame includes a payload encoding field." Accordingly, it is respectfully submitted that the rejection of claims 9, 20, 31, and 42 is unsupported by Mallory and should be withdrawn.

G. Claims 11, 22, 33, and 44

Inter alia, each of claims 11, 22, 33, and 44 recite "each payload encoding field includes information that is unknown to a v2 STA." Mallory does not teach expressly or inherently "each payload encoding field includes information that is unknown to a v2 STA."

The present Office Action recites, at Page 4, that "Mallory teaches ... each payload encoding field includes information that is unknown to a v2 STA (Mallory, col. 31, lines 39 - 43)". Yet this relied upon portion of Mallory allegedly recites, at col. 33, lines 34 - 52:

[w]henever a transition to Compatibility mode occurs, sender PE is reset to a value of 8 for all channels. Whenever a transition to V2 mode occurs, sender PE is reset to a value of 1 for all channels. A station which is not capable of transmitting or decoding compatibility mode frames (hereafter referred to as a non-compat station), adheres to the following additional rules. Whenever a non-compat station transitions from V2 to Compatibility mode, it transmits a broadcast RRCF (i.e. an RRCF with DA="FFFFFFFFFFFF") requesting PE=8 for all applicable refAddr values, within the first 30 seconds after the mode transition. As long as the non-compat station remains in Compatibility mode, it continues to transmit broadcast RRCFs requesting PE=8 for all applicable refAddr values, at a rate of one RRCF every 128 seconds. These RRCF transmission rules replace all other RRCF transmission rules for a non-compat station during Compatibility mode.

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Applicant respectfully asks, where is any reference to a "payload encoding field" that "includes information that is unknown to a v2 STA" in this relied upon portion of Mallory?

Applicant respectfully submits that at least this element is simply not present in Mallory. Thus, the relied upon portions of Mallory do not teach or suggest, expressly or inherently, "each payload encoding field includes information that is unknown to a v2 STA." Accordingly, it is respectfully submitted that the rejection of claims 11, 22, 33, and 44 is unsupported by Mallory and should be withdrawn.

III. Allowable Subject Matter

A potential statement of reasons for the indication of allowable subject matter is:

"none of the reference of record, alone or in combination, teach or suggest the combination of limitations found in the independent claims. Namely, claims 1-44 are allowable because none of the references of record, alone or in combination, teach or suggest 'each blocking frame having timing to allow an Inter-Frame Gap (IFG) having a duration that is not recognized by an HPNA v2 station (STA) as a duration defined by an HPNA v2 specification for an HPNA IFG'".

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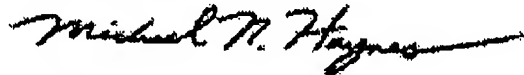
CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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